

Henry Luban, M.D.

Deposition

April 27, 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CHARLIE J. DAVIS, JR.,

Plaintiff,

vs.

ZELMER HYDEN, et al.,

Defendants.

_____)
NO: A02-0214 CV (JKS)

DEPOSITION OF HENRY LUBAN, M.D.

THURSDAY, APRIL 27, 2006, 2:02 p.m.

Anchorage, Alaska

Exhibit 12
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ALASKA
3
4 CHARLIE J. DAVIS, JR.,
5 Plaintiff,
6 vs.
7 ZELMER HYDEN, et al.,
8 Defendants.
9
10 NO: A02-0214 CV (JKS)
11
12
13 DEPOSITION OF HENRY LUBAN, M.D., taken on
14 behalf of Plaintiff, Pursuant to Notice, at MATTHEWS &
15 ZAHARE, 431 West Seventh Avenue, Anchorage, Alaska,
16 before Susan Campbell, Certified Shorthand Reporter
17 for Alaska Stenotype Reporters and Notary Public for
18 the State of Alaska.
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1 A-P-P-E-A-R-A-N-C-E-S
2
3 For Plaintiff: MATTHEWS & ZAHARE
BY: THOMAS A. MATTHEWS
4 431 West Seventh Avenue
Suite 207
5 Anchorage, AK 99501
6
7 For Defendants: STATE OF ALASKA
ATTORNEY GENERAL'S OFFICE
Department of Law
8 Criminal Division
BY: MARILYN J. KAMM
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Juneau, AK 99811
10
11 Reported By: Susan Campbell
12 Certified Shorthand Reporter
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1 ANCHORAGE, AK, THURSDAY, APRIL 27, 2006, 2:02 p.m.
2 HENRY LUBAN, M.D.,
3 called as a witness on behalf of the
4 Plaintiff, having been duly sworn upon
5 oath by Susan Campbell, Notary Public,
6 was examined and testified as follows:
7 EXAMINATION
8 BY MS. KAMM:
9 Q. Could you state your name for the record,
10 please?
11 A. Henry Luban.
12 Q. Spell your last.
13 A. L-u-b-a-n.
14 Q. And you are a medical doctor?
15 A. Correct.
16 Q. Can you give us an address where the court
17 reporter can reach you?
18 A. I gave her my card.
19 Q. Oh, okay.
20 A. 4500 Diplomacy, Suite 207, 99508. Thanks.
21 Q. Ever had a deposition taken before?
22 A. Yes.
23 Q. Few in your profession survive many years
24 without it, I'm afraid.
25 A. Quite a few, yes.

2 (Pages 2 to 5)

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<p>1 Q. I'll try to make it as painless as possible.</p> <p>2 I don't expect to be here all that long, but I do have</p> <p>3 a number of questions for you today.</p> <p>4 A. Sure.</p> <p>5 Q. So could you give me just a thumbnail sketch</p> <p>6 of your basic background, training, just so I</p> <p>7 understand?</p> <p>8 A. I'm a Board certified internist. And</p> <p>9 started practicing medicine in 1985. And have had a</p> <p>10 variety of positions, both clinical and administrative</p> <p>11 since then.</p> <p>12 Q. As I understand it, you came to Alaska first</p> <p>13 in 2004?</p> <p>14 A. Correct.</p> <p>15 Q. July or something like that?</p> <p>16 A. Yeah.</p> <p>17 Q. What brought you north?</p> <p>18 A. Well, we moved here from upstate New York.</p> <p>19 Alaska was a place we'd talked about living,</p> <p>20 periodically. And actually, this job came available.</p> <p>21 So I expressed an interest, and one thing led to</p> <p>22 another.</p> <p>23 Q. Had you had any experience with treating</p> <p>24 patients on either a temporary or occasional basis</p> <p>25 prior to 2004?</p>	<p>1 position.</p> <p>2 Q. So you got two jobs for the price of one?</p> <p>3 A. I guess you could look at it that way.</p> <p>4 Q. Is it fair for me to conclude that you are</p> <p>5 the chief medical person for the Department of</p> <p>6 Corrections?</p> <p>7 A. Yes.</p> <p>8 Q. And that's the position you've held</p> <p>9 basically for the last two years?</p> <p>10 A. Yes.</p> <p>11 Q. And others who have medical issues to</p> <p>12 address all report to you?</p> <p>13 A. Well, yes. We do have some contract</p> <p>14 positions. They're not part of the hierarchy. But in</p> <p>15 a sense, they do report to me, yeah.</p> <p>16 Q. Okay. Since 2000 and -- well, strike that.</p> <p>17 Since you began in 2004, have you made</p> <p>18 changes to the hierarchy that was then in place?</p> <p>19 A. Yeah. There have been some personnel</p> <p>20 changes and reporting changes, yes.</p> <p>21 Q. Okay. I want to focus specifically on an</p> <p>22 institution, the Palmer Correctional Center, that I'm</p> <p>23 focussed on in this case.</p> <p>24 A. Okay.</p> <p>25 Q. And have there been changes in the medical</p>
Page 7	Page 9
<p>1 A. Treating patients?</p> <p>2 Q. Yes.</p> <p>3 A. I'm not sure what you mean.</p> <p>4 Q. Any medical practice that you'd done in</p> <p>5 Alaska --</p> <p>6 A. Oh, in Alaska?</p> <p>7 Q. Yes. (Continuing) -- prior to 2004.</p> <p>8 A. Not in Alaska, no.</p> <p>9 Q. Sorry. My question wasn't very clear. You</p> <p>10 had treated many patients prior to 2004.</p> <p>11 A. Oh, yeah.</p> <p>12 Q. Your current position then is what</p> <p>13 specifically?</p> <p>14 A. Medical Director, Health Services</p> <p>15 Administrator. It's kind of two positions combined</p> <p>16 into one.</p> <p>17 Q. And that's for the Department of</p> <p>18 Corrections?</p> <p>19 A. Yes.</p> <p>20 Q. Is there a split in your duties between the</p> <p>21 two positions?</p> <p>22 A. I don't look at it like that. At one time</p> <p>23 it was two separate positions. And I believe a year</p> <p>24 or two before I got here, it was combined into one.</p> <p>25 And so since I've been here, it's just been one</p>	<p>1 hierarchy in Palmer since you arrived?</p> <p>2 A. No.</p> <p>3 Q. Okay. Are you the sort of physician in</p> <p>4 charge, if you will, for the Palmer Correctional</p> <p>5 Center at this point?</p> <p>6 A. Well, we have a clinical director,</p> <p>7 Dr. Bingham, who clinically oversees our mid-level</p> <p>8 providers.</p> <p>9 Q. When you say "mid-level provider," what does</p> <p>10 that mean?</p> <p>11 A. PAs, physician's assistant. For clinical</p> <p>12 issues, she's really the person that has more</p> <p>13 day-to-day contact with them than I do.</p> <p>14 Q. Yours would be more of a supervisory role?</p> <p>15 A. Well, I supervise her. But I usually --</p> <p>16 it's -- it's not that clearcut. The way we've set it</p> <p>17 up, I take care more of the administrative issues, but</p> <p>18 I get involved in the clinical issues also. There's</p> <p>19 no exact line of demarcation.</p> <p>20 Q. Is there currently a medical doctor on staff</p> <p>21 at Palmer Correctional Center?</p> <p>22 A. Well, I wouldn't use the term "on staff."</p> <p>23 We have a contract physician who goes out there three</p> <p>24 times a month. And then, of course, Dr. Bingham goes</p> <p>25 out there once a month and consults. So we provide</p>

3 (Pages 6 to 9)

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1 physician oversight four -- basically four times a
 2 month.
 3 Q. And who's the contract doctor?
 4 A. Dr. Billman, Jim Billman.
 5 Q. Just so I can understand, what type of a
 6 doctor is Dr. Billman?
 7 A. He's an internist.
 8 Q. And Dr. Bingham?
 9 A. Family practitioner.
 10 Q. Are you familiar with the medical care that
 11 was provided at Palmer prior to 2004?
 12 A. I'm not sure I understand your question.
 13 Q. I just want to make sure I understand what
 14 you can and cannot talk about, really, as a witness.
 15 So I'm just trying to understand, have you as part of
 16 your job as the current medical director gone back to
 17 review medical care that was provided during the
 18 past --
 19 A. Only on a case-by-case basis, if a case like
 20 this comes up.
 21 Q. Where you might be asked to review --
 22 A. Right.
 23 Q. -- the specific care that was given to an
 24 inmate --
 25 A. Right.

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1 Q. -- or patient? But other than that --
 2 A. No.
 3 Q. -- you haven't been through a systemic
 4 review?
 5 A. No, I haven't.
 6 Q. Is it still the case today that day-to-day
 7 medical care for inmates in Palmer is provided
 8 primarily by PAs?
 9 A. Yes. Nurses and PAs.
 10 Q. Can you tell me what the hierarchy is out
 11 there?
 12 A. Well, that's an interesting question. The
 13 PAs are the -- well, we have -- at Palmer, we have --
 14 one of the PAs is called the institutional health care
 15 officer. And he provides clinical oversight and also
 16 direct clinical care to the staff and patient
 17 population, inmate population. So he's the
 18 supervising medical person.
 19 Q. And who is that person currently?
 20 A. Roger Hale.
 21 Q. Okay. And then there's another PA?
 22 A. He's -- they rotate clinical duties. But
 23 the other PA is the institutional health care officer
 24 at Mat-Su and, I believe, Point MacKenzie. They've
 25 kind of split up their administrative assignments.

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1 Q. Who is that person?
 2 A. Roger Hughes.
 3 Q. Same two PAs that we had in 2002 then.
 4 A. Yes.
 5 Q. Do you happen to know, was Mr. Hughes the
 6 institutional health care officer for Mat-Su and
 7 Point MacKenzie back in 2002?
 8 A. Don't know.
 9 Q. And in addition to the PAs, you also have
 10 nurses on staff, correct?
 11 A. Yes.
 12 Q. And how many are out there now?
 13 A. I don't remember.
 14 Q. Do you know whether it's increased since
 15 2002?
 16 A. I don't think it's changed.
 17 Q. Is it fair to say that Roger Hale is the
 18 senior-most medical officer on full-time staff at
 19 Palmer?
 20 A. You mean he's been there the longest or
 21 he's -- administratively he's in charge?
 22 Q. I was thinking of the latter,
 23 administratively he's in charge.
 24 A. Yeah, yeah.
 25 Q. Is there currently a period of time during

Page 13

1 the day, 24-hour day, at Palmer Correctional Center
 2 where there is no medical staff at Palmer?
 3 A. Yes.
 4 Q. And what are those hours, do you know?
 5 A. I think the nurse -- I'm just guessing,
 6 10:00 -- 10:00 or 11:00 at night, perhaps, somewhere
 7 around there. Maybe a little earlier. I don't know
 8 exact hours. But they work until sometime in the
 9 evening and then come back the next morning.
 10 Q. So during the sleeping hours, if I can call
 11 it that, there may be no medical staff there.
 12 A. There is no medical staff.
 13 Q. Is that true throughout the correctional
 14 system?
 15 A. No.
 16 Q. Are there other centers where there is
 17 full-time medical staff?
 18 A. Yes.
 19 Q. And what other places have full-time medical
 20 staff?
 21 A. Well, the Anchorage Correctional Complex
 22 does. Our Hiland facility does. I think that's it.
 23 That's it. Just those two facilities. Oh, Fairbanks
 24 sometimes does, not always.
 25 Q. And how about Juneau?

4 (Pages 10 to 13)

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1 A. No, they don't.

2 Q. Can you explain for me why certain

3 facilities have full-time coverage and others do not?

4 A. Well, certainly, the ones that are -- that

5 are busier at night, a lot of times we -- the

6 Anchorage Correctional Complex is the -- is our big

7 remand facility so, of course, we have a lot of people

8 coming in at all hours. Hiland tends to have a -- I

9 would say a sicker clientele, perhaps, than Palmer.

10 And Fairbanks is a big remand facility as well.

11 Q. You're familiar with Mr. Davis' medical

12 care?

13 A. Yes.

14 Q. When did you first become familiar with

15 that?

16 A. I don't remember.

17 Q. You were asked at some point in time as part

18 of this litigation, I take it --

19 A. Yes.

20 Q. -- to review the care that he received?

21 A. Yes.

22 Q. And you did that?

23 A. Yes.

24 Q. Can you tell me what you did?

25 A. I reviewed the chart.

Page 15

1 Q. Okay. Do you have the chart there in front

2 of you? Is that what you brought?

3 A. Yes.

4 Q. Mind if I take a quick look?

5 A. Help yourself.

6 MR. MATTHEWS: Is this the numbered set, do

7 we know?

8 MS. KAMM: Doesn't look like it.

9 MR. MATTHEWS: I'm assuming it's the same

10 set that I got.

11 MS. KAMM: I'm assuming it is, too. I

12 brought the numbered set with me. So I'm hoping it's

13 the same set.

14 MR. MATTHEWS: The little details that we

15 lawyers get to worry about. Looks like the same set.

16 Q. You've never met Mr. Davis, right?

17 A. No.

18 Q. Never had any contact with him?

19 A. No.

20 Q. Never examined him in any clinical setting,

21 right?

22 A. No.

23 Q. And your purpose in reviewing this chart was

24 simply to ascertain whether his care was good, bad or

25 otherwise?

Page 16

1 A. I think I was asked to do an affidavit, if

2 I'm not mistaken, regarding his medical care.

3 Q. You did submit an affidavit. And I'm happy

4 to show you that.

5 A. I believe I did, yes. When did I write

6 that?

7 MR. MATTHEWS: I'll ask you that. It says

8 October of 2004, which I think is -- let's mark it.

9 (Exhibit 1 was marked.)

10 MR. MATTHEWS: Take a look at Exhibit 1.

11 (Discussion off the record.)

12 BY MR. MATTHEWS:

13 Q. Is that a copy of an affidavit which you

14 signed in this case?

15 A. That I signed?

16 Q. On the last page.

17 A. Yes.

18 Q. Is that your signature?

19 A. Yes.

20 Q. It says that it was dated October the 4th,

21 2004. Does that jog your memory as to when you might

22 have prepared it?

23 A. No.

24 Q. Do you recall that you prepared this

25 affidavit a year and a half or so ago?

Page 17

1 A. I have -- I have no recollection of when I

2 did it. Obviously, it's been a while since I don't

3 remember.

4 Q. Okay. Do you have any memory of this

5 affidavit at all?

6 A. Little bit, yeah. I mean, I do now that I

7 read it, yeah.

8 Q. If I can draw your attention to page three,

9 beginning of your narrative summary, will you take a

10 look at that for me, please?

11 A. I don't have a summary -- oh, yes. Okay.

12 Q. Do you see that section, paragraph five?

13 A. Uh-huh, yes.

14 Q. Beginning on page four about midway through

15 that paragraph at the line marked number two, it says

16 while at Palmer, do you see that?

17 A. Yes.

18 Q. Sentence reads "While he was at Palmer,

19 there were no reports he suffered from chest pain,

20 dizziness or other cardiovascular symptoms."

21 A. Uh-huh.

22 Q. And that was your opinion based upon your

23 review of Mr. Davis' chart?

24 A. Yes.

25 Q. Do you know whether there were reports of

5 (Pages 14 to 17)

Exhibit

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1 chest pain, dizziness or other cardiovascular symptoms
 2 prior to Mr. Davis' arrival at Palmer?
 3 **A. I think on one or two occasions when he was**
 4 **in Juneau, he complained of dizziness.**
 5 Q. And you didn't see any reports of dizziness
 6 in the Palmer records.
 7 **A. No.**
 8 Q. Did you see any reports of high blood
 9 pressure in the Palmer records?
 10 **A. Any reports of high blood --**
 11 Q. Yes.
 12 **A. He had a few readings that were mildly**
 13 **elevated.**
 14 Q. And do you recall -- when you say "mildly
 15 elevated," what do you mean?
 16 **A. That's a good question. I think he had a**
 17 **couple of readings, 150 systolic, perhaps, maybe as**
 18 **high as 160 systolic.**
 19 Q. So we're clear for everybody reading this
 20 later, when you say "systolic," which part --
 21 **A. Systolic blood pressure, the upper number.**
 22 Q. Diastolic is the lower number.
 23 **A. Correct.**
 24 Q. So something 150 or higher would be an
 25 elevated number on the systolic?

Page 19

1 **A. That's not an easy question to answer. It**
 2 **depends on the particular patient, what their other**
 3 **medical problems are. I think in this fellow, 150 was**
 4 **mildly elevated, yes.**
 5 Q. How about a blood pressure, a systolic
 6 number in the 190s?
 7 **A. That's high.**
 8 Q. That would be dangerously high?
 9 **A. Long term, yes.**
 10 Q. Okay.
 11 **A. Short term, I don't know.**
 12 Q. Do you recall seeing in the records that you
 13 were provided a blood pressure chart --
 14 **A. Yes.**
 15 Q. -- for Mr. Davis?
 16 **A. Yes.**
 17 Q. Was one kept while he was at Palmer?
 18 **A. Yes. Would you like to see it?**
 19 Q. Maybe you could point it out to me.
 20 **A. I put a paperclip on it. I'll find it.**
 21 MS. KAMM: If we could go off the record for
 22 a moment.
 23 THE WITNESS: Here.
 24 MS. KAMM: Or maybe you want this on the
 25 record. I think these are what I gave him yesterday,

Page 20

1 not what he had when he did the affidavit.
 2 MR. MATTHEWS: Oh, okay. Okay. Hold on to
 3 that page for just a minute.
 4 (Exhibit 2 was marked.)
 5 BY MR. MATTHEWS:
 6 Q. Let me ask you, if I can, Dr. Luban, is the
 7 document we've now marked as Exhibit 2 the blood
 8 pressure sheet that you were referring to?
 9 **A. Yes.**
 10 Q. That's the only one you've seen, correct?
 11 **A. Yes.**
 12 Q. It's the only one I had seen, so I just
 13 wanted to make sure we were clear.
 14 **A. Yeah.**
 15 Q. This shows blood pressure -- actually, Vital
 16 Sign Flow Sheet for Mr. Davis from the dates April 25,
 17 2002 through June 11, 2002, right?
 18 **A. Yes.**
 19 Q. Are you aware of any vital sign flow sheet
 20 after June 11, 2002?
 21 **A. No, I'm not.**
 22 Q. Does that surprise you?
 23 **A. No.**
 24 Q. Should there be one?
 25 **A. I don't know that they need to have a flow**

Page 21

1 **sheet. They could put the blood pressure in the chart**
 2 **with the progress notes. That's what I would do. I**
 3 **don't believe a flow sheet's necessary.**
 4 Q. Having started a flow sheet like this,
 5 wouldn't it be easier to locate blood pressure
 6 readings on a continuity basis if they were all kept
 7 in one place?
 8 **A. Might be.**
 9 Q. Did you see regular checks of Mr. Davis'
 10 blood pressure after June 11th, 2002 in the records
 11 that you were provided?
 12 **A. I don't recall how many there were after**
 13 **June, to be honest with you.**
 14 Q. In the blood pressure readings that you have
 15 in front of you, Exhibit 2, there are some systolic
 16 readings that are at least mildly elevated, correct?
 17 **A. Yes.**
 18 Q. Mr. Davis was taking medication for --
 19 taking a bunch of medication -- but blood pressure
 20 medication?
 21 **A. Yes.**
 22 Q. So these would be controlled readings of his
 23 blood pressure; is that true?
 24 **A. Well, there's a couple that are a little**
 25 **higher than you'd like to see. But in general, I**

6 (Pages 18 to 21)

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1 wouldn't say it's too bad. Could be a little better.
 2 MR. MATTHEWS: Let's mark that as the next
 3 one.
 4 (Exhibit 3 was marked.)
 5 BY MR. MATTHEWS:
 6 Q. If you'd take a look at Exhibit 3, as well.
 7 A. Yeah.
 8 Q. Initially, my question to you, you mentioned
 9 that you could put the blood pressure readings in
 10 either a flow sheet, such as Exhibit 2, or in the
 11 progress reports, right?
 12 A. Yes.
 13 Q. Is what we've marked here the progress
 14 reports for Mr. Davis?
 15 A. Yes.
 16 Q. Does it appear to be a complete copy of the
 17 progress reports that you're aware of?
 18 A. Yes.
 19 Q. Is it fair for me to conclude that any
 20 readings of Mr. Davis' blood pressure while he was at
 21 Palmer should have been listed in one or the other of
 22 these two documents?
 23 A. Well, they may have another place they put
 24 blood pressure readings that I'm not aware of.
 25 Q. These are the two places you would be aware

Page 23

1 of?
 2 A. Yeah. I think sometimes in some facilities,
 3 they put them on the medication log. But I would say
 4 these are the two main places.
 5 Q. As the physician in charge of medical care,
 6 these are the two places you would expect to find
 7 them, true?
 8 A. I suppose.
 9 Q. If I can draw your attention to the sixth
 10 page of that exhibit --
 11 A. Okay.
 12 Q. -- specifically the entries that begin
 13 "5/8/02."
 14 A. Yes.
 15 Q. And there's a reference about midway through
 16 the page, it says "5/8/02," I think it's "addendum."
 17 And "BP, 148/90," and it's circled.
 18 A. Yes.
 19 Q. Do you see that?
 20 A. Yes.
 21 Q. And the note immediately below that appears
 22 to read "Recommend tightening BP control"?
 23 A. Yeah.
 24 Q. Is the note that follows an expression of
 25 concern about Mr. Davis' elevated blood pressure?

Page 24

1 A. He's recommending it be tightened. I
 2 don't -- he says need to be concerned about decreased
 3 blood pressure and light-headedness. So he's
 4 actually -- I'm not sure exactly what he's saying
 5 there. He's recommending a range of blood pressure, I
 6 think is what he's doing.
 7 Q. He'd like to see the blood pressure go down
 8 into that range.
 9 A. That's what he's saying, yes.
 10 Q. Is it fair to conclude that at least as of
 11 May 8th, 2002, Mr. Davis was reporting
 12 light-headedness to the physician's assistant in
 13 Palmer?
 14 A. I don't believe he was -- I don't believe
 15 it's fair to say that, no.
 16 Q. Well, then why does it say need to be
 17 concerned about lowering BP, light-headedness?
 18 A. I don't know why he says that. He may have
 19 noticed in Juneau that the patient had had some
 20 light-headedness.
 21 Q. Is light-headedness a potential symptom of
 22 cardiac trouble?
 23 A. It's possible.
 24 Q. Is dizziness a potential symptom of cardiac
 25 trouble?

Page 25

1 A. It's possible.
 2 Q. Elevated blood pressure a potential
 3 symptom of cardiac trouble?
 4 A. Elevated blood pressure is not a symptom.
 5 Q. What would you describe it?
 6 A. It's a sign.
 7 Q. A sign. Okay. How do you distinguish
 8 between a sign and a symptom?
 9 A. A symptom is something the patient reports.
 10 A sign is some objective data.
 11 Q. Okay. And since you can't measure
 12 objectively light-headedness, you don't consider that
 13 to be a sign?
 14 A. Correct.
 15 Q. You call it a symptom.
 16 A. (Witness nods head.)
 17 Q. So the report of light-headedness here, does
 18 that indicate to you that Mr. Davis was reporting
 19 light-headedness?
 20 A. What Dr. Billman wrote?
 21 Q. Is that Dr. Billman's writing?
 22 A. Yes. I don't know why he wrote that. He's
 23 not stating the patient has light-headedness. He's
 24 just saying he's concerned about decreased blood
 25 pressure, and he puts an arrow to light-headedness.

7 (Pages 22 to 25)

Exhibit

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1 **But I'm not sure what he means by that.**
 2 Q. Dr. Billman is an internist like yourself?
 3 **A. Correct, correct.**
 4 Q. Do you think that's a term he would use
 5 lightly?
 6 **A. I don't think he'd put anything in the chart**
 7 **that he would use lightly.**
 8 Q. So if Dr. Billman, in your experience, would
 9 have made a note about light-headedness in the chart
 10 at this point, it was significant to him, at least.
 11 **A. Perhaps.**
 12 Q. In your experience since coming to Alaska,
 13 is Dr. Billman a careful practitioner?
 14 **A. Yes.**
 15 Q. Is he given to making inaccurate notes in
 16 medical charts?
 17 **A. Not that I'm aware of.**
 18 Q. In your experience with Dr. Billman, if he
 19 were recommending a tightening of Mr. Davis' blood
 20 pressure control, is that a recommendation to take
 21 seriously?
 22 **A. Yes.**
 23 Q. Between Exhibits 2 and 3, it appears that
 24 Mr. Davis' blood pressure was checked again in Palmer
 25 up through June 11th, 2002.

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1 **A. Yes.**
 2 Q. Correct? And it was monitored fairly
 3 regularly during that period of time?
 4 You need to answer out loud. Sorry.
 5 **A. I forgot the question.**
 6 **(Record read.)**
 7 THE WITNESS: Yes.
 8 BY MR. MATTHEWS:
 9 Q. And fluctuated somewhat?
 10 **A. Fluctuated mildly.**
 11 Q. It looked like the systolic number actually
 12 was a little higher, a little lower, depending upon
 13 when it was measured?
 14 **A. Blood pressure will change quite often.**
 15 Q. Daily, right?
 16 **A. Correct.**
 17 Q. Do you see any indication in the charts that
 18 you have between Exhibits 2 and 3 that Mr. Davis'
 19 blood pressure was measured again after June 11th,
 20 2002?
 21 **A. In Palmer or at another place?**
 22 Q. In Palmer. I'm sorry.
 23 **A. I don't -- I don't see anything in the**
 24 **chart, no.**
 25 Q. Mr. Davis remained in Palmer until the

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1 latter part of October of 2002, right?
 2 **A. He was transferred in October, yes.**
 3 Q. Is it fair to say, then, for a period of
 4 four months, there's no indication that Mr. Davis'
 5 blood pressure was checked in Palmer, at least in the
 6 chart?
 7 **A. In the chart that we have, no.**
 8 Q. Do you think that's good care?
 9 **A. I think he received essential health care.**
 10 Q. Do you think it would be good care for a
 11 70-year-old man with an implanted defibrillator to go
 12 four months without having his blood pressure checked?
 13 **A. I would say the average 70-year-old man**
 14 **would be at home and might get his blood pressure**
 15 **checked every three to four months at a doctor's**
 16 **office, perhaps. So it's certainly within reason.**
 17 Q. If you were treating a 70-year-old patient
 18 with an implanted defibrillator, Dr. Luban, who was
 19 not at home but was institutionalized, would you check
 20 his blood pressure more than every four months?
 21 **A. I might. I think it all depends how he was**
 22 **doing, how it's been up to then.**
 23 Q. There were expressions in the chart of
 24 concern about his blood pressure, right?
 25 **A. There was one expression that we just went**

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1 **over, yes. But subsequent readings were pretty close**
 2 **to that target level for the next month.**
 3 Q. Are COs in Palmer trained to measure blood
 4 pressure?
 5 **A. I don't know.**
 6 Q. Are they allowed to measure blood pressure?
 7 **A. I don't know.**
 8 Q. Is there anybody other than medical staff at
 9 Palmer who is authorized to make notes in a medical
 10 chart?
 11 **A. Anybody other than who?**
 12 Q. Medical staff.
 13 **A. I don't believe so.**
 14 Q. Which would include the PAs and the nurses
 15 or a visiting M.D., correct?
 16 **A. Correct, yeah.**
 17 Q. In your experience, Dr. Luban, is dizziness
 18 a common symptom for somebody with elevated blood
 19 pressure?
 20 **A. No.**
 21 Q. Is it a symptom which would concern you for
 22 somebody with elevated blood pressure?
 23 **A. All symptoms need to be -- need to be looked**
 24 **into.**
 25 Q. If a patient with a history of cardiac

8 (Pages 26 to 29)

Exhibit 12
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